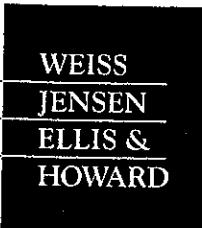


Professional Corporation



February 7, 2001

**VIA FACSIMILE (213) 236-1735 & US MAIL**

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SEATTLE, WA 98101

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Ms. Colleen Leach  
General Star Management Co.  
550 South Hope Street  
Suite 700  
Los Angeles, CA 90071

**Re: Gail Spicuzza  
Our File No. 95182.002**

Dear Ms. Leach:

Thank you for taking my call this morning. I enclose for you a copy of the arbitration claim filed against Ms. Spicuzza and Prudential. Furthermore, I enclose for your review a copy of my résumé.

Much of this claim, if not the entire claim, arises out of facts which my firm developed in an arbitration in which Ms. Spicuzza sued another broker-dealer for statutory rescission of securities transactions involving monies which had come from the joint savings account in the names of Ms. Spicuzza and Mr. Lockrem. The defense counsel in that claim is the claimant's counsel in this claim. I have extensive and detailed knowledge of the facts of the underlying arbitration. Of course, my files are open to you for your review.

As you can see from my enclosed résumé, I have extensive experience in the matters, and am routinely retained to defend brokers and broker-dealers from regulatory action, and civil claims in arbitration and in court. Retaining me, at least in the capacity of special counsel could add great efficiencies to the upcoming proceedings. You can view more information on our firm at <http://www.weiss-law.com>.

**EXHIBIT "4"**

February 7, 2001  
Page 2

I look forward to your early review of these materials and a call to flesh out strategy. As I indicated, my client needs to provide some response to arbitration claim by February 16.

Very truly yours,

WEISS JENSEN ELLIS & HOWARD

John A. Bender

JAB/tjb

Encls

cc: Ron Alberts

**JOHN A. BENDER**  
**520 PIKE STREET, SUITE 2600**  
**SEATTLE, WASHINGTON 98101**  
**(206) 340-1825**

---

## Professional Experience

Lead Counsel in complex securities, unfair trade practice, employment, and commercial litigation matters in federal and state courts and arbitrations. Arbitrator and Mediator in commercial, securities, employment and domain name disputes for various arbitration forums. Counsel to securities houses on startup planning, new securities e-business concepts and securities regulatory concerns. Consultant to National Association of Securities Dealers on arbitrator training, arbitrator recruitment, adjudicative process, and employment issues in the securities industry.

## Employment History

**Weiss, Jensen, Ellis & Howard, Seattle, WA, Shareholder** 1991-present

Counsel to Securities Industry members on securities regulatory and dispute resolution issues. Litigation of securities, unfair trade practice, unfair competition, employment, fraud and secured lending matters. Arbitrator and mediator in a variety of commercial, securities, employment and domain name disputes.

*Practice Profile:*

Counseling Broker-dealers and new business ventures on venture capital, business and capital planning and securities laws relating to myriad money raising and business strategies.

Manage the firm's financial services dispute practice, including representing broker/dealers, registered representatives, and consumers, in securities litigation and arbitration claims, including all types of consumer claims, non-compete, employment, and unfair competition claims.

Representation of various national and regional broker dealers in litigation and arbitration of matters involving the \$400,000,000.00 Towers Financial Corporation "Ponzi" fraud.

Representation of multi-state mortgage company in complex multi-million-dollar lender liability litigation in Federal and State courts in which the client prevailed in all respects.

Local Representation of a major California bank in fraud, receivership, and foreclosure matters regarding multi-million dollar real property transactions and workouts.

Local Representation of an international tire and rubber company in complex real estate and employment litigation.

**Essenburg & Staton, Seattle WA, Federal & Todd, Atlanta, GA.** 1985-1990

*Practice Profile:*

Trial Attorney in employment, consumer protection, securities, commercial, real estate, and construction matters.

## Education and Organizations

Seattle University School of Law (Univ. Puget Sound)	JD, 1985
Emory University Law School, Atlanta, GA. Editorial Board, Bankruptcy Developments Journal	1984-1985
Saint Martin's College, Olympia, WA.	BA, 1982

## Memberships/Affiliations

Member of State Bar of Georgia, Washington State Bar, King County Bar Association, American Bar Association.

Member of the litigation sections of the various bar associations

Arbitrator for the National Association of Securities Dealers, New York Stock Exchange, Pacific Stock Exchange, National Futures Association, American Arbitration Association, and National Arbitration Forum.

Arbitrator instructor appointed by the securities industry, and involved in the training of hundreds of securities arbitrators throughout the United States regarding the securities arbitration process and employment disputes within the securities industry.

Keynote speaker and instructor in more than 20 CLE seminars in fifteen cities throughout the United States during the past five years.

*Pro tem* Judge, King County, WA. 1997 – present

## Publications

“*Grab the Arbitrators’ Minds and Their Hearts Will Follow*”, Securities Arbitration 1999, Settlements, Laptops, Experts & Arbitrators, Practicing Law Institute Course Book B-1131, pg. 559 (PLI 1999)

“*Securities Arbitrators Training*”, Securities Arbitration 1998, Redefining Practices and Techniques, Practicing Law Institute Course Book B-1061, pg. 283 (PLI 1998).

“*Inside NASDR’s Training Program*”, Securities Arbitration 1997, Arbitration Comes of Age, Practicing Law Institute Course Book B-998, pg. 763 (PLI 1997).

“*The Torok Tort: Recovery for Abusive Litigation*,” 23 Ga. St. Bar Journal 84 (1986).

“*Chapter 11: Policy in Flux*,” 2 Bankr. Dev. Jour. 133 (1985)

## Articles Referenced By

Securities Arbitration Procedure Manual, Third Edition, Chapter 10, “*Arbitrators at the SRO’s...*” pp 453-459, David E. Robbins, Lexis Law Publishing 1998.

## References Provided Upon Request

1 NASH & EDGERTON  
 2 SAMUEL Y. EDGERTON, III (CA Bar No. 127156)  
 2615 Pacific Coast Highway, Suite 322  
 3 Hermosa Beach, California 90254  
 3 Telephone: (310) 937-2066  
 4 Facsimile: (310) 937-2064

**RECEIVED**

**JAN 19 2001**

**WEISS, JENSEN  
 ELLIS & HOWARD**

5 Attorneys for Claimant  
 5 Linda Arana, Executor of the Estate of  
 6 her late father, Theodore Lockrem

7 **BEFORE THE**  
 8 **NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

10 LINDA ARANA, Executor of the	)	NASD Case No.: 00-04488
11 Estate of her late father,	)	
11 Theodore Lockrem, Deceased	)	
12	)	FIRST AMENDED STATEMENT OF
12 Claimant,	)	CLAIM FOR BREACH OF FIDUCIARY
13 v.	)	DUTY; CONVERSION; FRAUD AND
14 PRUCO SECURITIES, CORPORATION,	)	DECEIT; UNAUTHORIZED TRADING;
14 a Delaware Corporation,	)	ELDER ABUSE; SELLING AWAY;
15 PRUDENTIAL SECURITIES, INC., a	)	FAILURE TO SUPERVISE;
15 Delaware Corporation and GAIL	)	NEGLIGENCE; AND INJUNCTIVE
16 SPICUZZA, an individual	)	RELIEF
17	)	
17 Respondents.	)	

18  
 19 Claimant, Linda Arana, the Executor of the Estate of her  
 20 late father, Theodore Lockrem ("Lockrem") (collectively referred  
 21 to as the "Lockrem Estate"), allege as follows:

22 I.

23 **THE PARTIES**

24 1. Lockrem, formerly of Page, Arizona, passed away on  
 25 October 8, 1997. At the time of his death, he was 72 years old  
 26 and going blind. At the time of his death, he was renting a room  
 27 in Princeville, Kauai, at a house owned by respondent Gail

1 Spicuzza ("Spicuzza").

2       2. Arana is the only surviving family member of Lockrem.  
3 She is the Executor of his Last Will and Testament. She and her  
4 husband, along with their two children, live in Las Vegas,  
5 Nevada.

6       3. Pruco Securities Corporation ("Prudential") a wholly  
7 owned subsidiary of Prudential Insurance Company of America. It  
8 is a registered broker-dealer and a member firm and of the  
9 National Association of Securities Dealers, Inc. ("NASD"). Its  
10 principal place of business is in Newark, New Jersey, although it  
11 has offices in all 50 states.

12       4. Prudential Securities, Inc. is a registered broker-  
13 dealer and a member firm of the National Association of  
14 Securities Dealers, Inc. Its principal place of business is  
15 located in New York, New York. As a wholly owned subsidiary of  
16 Prudential Insurance Company of America, it provided oversight  
17 authority over the securities operations of Prudential during  
18 this time period.

19       5. Spicuzza, age 51, is the owner of a bed and breakfast  
20 called the "Angel Inn" located in Princeville, Kauai. Her bed  
21 and breakfast is marketed on the Internet as a place run "by  
22 angels." A former nun in the 1970's, Spicuzza left the convent  
23 and went into private business. In 1984, she joined IDS  
24 Financial Services and passed the Series Seven exam. Thereafter,  
25 she joined Prudential as an insurance salesperson and registered  
26 representative. At all relevant times hereto, she was an  
27 affiliated person of Prudential and employed as an insurance  
28

1 salesperson and securities registered representative out of  
2 Prudential's Honolulu, Hawaii office.  
3

4 **II.**

5 **NATURE OF THE CASE**

6 6. This action arises from the fraud and deceit of  
7 Spicuzza in converting approximately \$220,000 from Lockrem and  
8 his Estate to her own personal use.

9 **III.**

10 **GENERAL ALLEGATIONS**

11 7. In or about December 1996, Lockrem, a retired widower,  
12 traveled to Kauai, Hawaii to visit friends and to look into  
13 purchasing a retirement condominium there. During the trip, he  
14 met Spicuzza and became romantically interested in her.

15 Spicuzza, a Prudential registered representative, enticed him to  
16 liquidate all assets so that she could invest his money with her  
17 upon the representation that his money would be invested with  
18 Prudential Securities, Inc. and other securities brokerages  
19 located in the continental United States.

20 8. Specifically, Spicuzza promised Lockrem that she would  
21 split the profits on any gains made from his securities  
22 investments that she would manage. By her own admission, she  
23 represented to him that his money would be invested in stocks and  
24 mutual funds. Thereafter, Lockrem kept a written list of the  
25 brokerage firms where Spicuzza had invested his money.  
26 Prudential was on that list.

27 9. At or about the same time, Spicuzza, with a net annual  
28

1 income of less than \$20,000, persuaded Lockrem to loan her other  
2 monies in exchange for her promise to physically take care of him  
3 and allow him to live at her home for the rest of his life.

4 10. In or about June 1997, in reliance on the promises made  
5 above, Lockrem decided not to purchase a condominium. Instead,  
6 he decided to sell his home in Page, Arizona and move in with  
7 Spicuzza. Thereafter, Lockrem allowed Spicuzza to manage all of  
8 his finances.

9 11. From January 1997, until his death in October 1997,  
10 Spicuzza, in violation of Prudential policy, borrowed  
11 approximately \$110,000 from Lockrem to pay down her mortgage debt  
12 and to pay for other personal expenses.

13 12. In July 1997, Lockrem moved in with Spicuzza at her  
14 Kauai home. Spicuzza persuaded Lockrem to open up a joint savings  
15 account at the Kauai Federal Credit Union where she also  
16 maintained a private checking account.

17 13. Upon opening the joint savings account, Lockrem  
18 deposited \$109,751. These monies derived from the sale of  
19 Lockrem's Page, Arizona home. With the opening of the joint  
20 account, Spicuzza invested Lockrem's money in several newly-  
21 opened brokerage accounts at unrelated brokerage firms on the  
22 mainland in her name only. In violation of the NASD Rules of  
23 Conduct she invested in excess of \$70,000 in these brokerage  
24 accounts held in her name only. The source of those funds came  
25 from Lockrem, through withdrawals made from the joint savings  
26 account and by approximately \$20,000 in travelers checks  
27 purchased with Lockrem's remaining house sale money.

1       14. Unbeknownst to Lockrem, Spicuzza did not invest  
2 Lockrem's money in bonds and mutual funds. Instead she invested  
3 Lockrem's money in unsuitable, single issue equity securities,  
4 covered call options, straight options and naked options.

5       15. At all relevant times, Prudential was aware that its  
6 registered representative, Spicuzza, was opening outside  
7 brokerage accounts in her name to purchase securities.

8       16. Prudential failed to inquire as to the source of her  
9 investment funds although it Prudential knew or should have known  
10 that Spicuzza did not earn anywhere near the amount of income to  
11 be trading in excess of \$70,000 in multiple securities accounts.

12       17. Spicuzza's plan to earn money stemmed from the fact  
13 that she earned less than \$20,000 a year as reported on her tax  
14 returns. Desperate for money to maintain her lifestyle, she  
15 wished to make high returns by trading in speculative securities.

16       18. In 1997, Spicuzza enrolled in a Wade Cook investment  
17 seminar and learned the Wade Cook strategy for trading options.

18       19. Needing cash to finance her newly acquired trading  
19 ambition, Spicuzza used Lockrem's money to pay for her purchases.  
20 Until the last month of his life in October 1997, however,  
21 Lockrem was totally unaware that she had invested his money in  
22 options.

23       20. Upon information and belief, in August 1997, Spicuzza  
24 withdrew approximately \$35,000 from the joint account and  
25 deposited those sums in her personal checking account without his  
26 consent. This money was not invested; it was converted by  
27 Spicuzza for her own personal use.

1       21. It was not until October 1997 that Lockrem became aware  
2 that his money was invested in options instead of mutual funds  
3 and further that he had less than \$3,600 in the bank to live.

4       22. On October 8, 1997, Lockrem died by a reported suicide.  
5 His death took place in his room at Spicuzza's home by hanging.

6       23. The Kauai Police, who arrived on the scene immediately,  
7 interviewed Spicuzza. She informed them of the arrangement that  
8 Lockrem and her were living together and told two different  
9 police detectives that she had an arrangement whereby she  
10 invested Lockrem's money in stocks and mutual funds and that the  
11 principal investment would eventually be paid back to Lockrem and  
12 that she and Lockrem had an agreement to split any potential  
13 profits. At no time did she disclose that she had invested his  
14 funds in her own name at multiple brokerage firms or that  
15 Lockrem's money had been invested in risky options.

16       24. On October 10, 1997, the day following Lockrem's death,  
17 his daughter, Arana, flew to Kauai to re-claim her deceased  
18 father and his estate. Arriving late that evening, she met with  
19 Spicuzza the next morning at the Angel Inn. Spicuzza asked if  
20 she was included in any known Last Will and Testament. After  
21 being informed by Arana that she was not aware that Spicuzza was  
22 included, Spicuzza told her that Lockrem had left her everything  
23 before he died and that Arana was only entitled to a small bag  
24 containing Lockrem's clothes. Spicuzza claimed that everything  
25 else, including Lockrem's money, personal computer and his hand-  
26 made wood carvings belonged to her.

27       25. Reluctantly, Spicuzza divulged the identity of the her  
28

1 joint account with Lockrem to Arana. Thereafter, Arana checked  
2 the balance in the joint account and discovered that her father  
3 only had \$3,600 left in cash of the approximate \$222,000 that he  
4 had the previous January. She immediately requested and received  
5 a "hold" on the account from the Kauai Federal Credit Union.

6 26. After meeting with Arana, Spicuzza left the following  
7 day for Seattle, Washington. There, Spicuzza took an advanced  
8 Wade Cook course in option trading. Although claiming to be  
9 bereaved about Lockrem's death, she immediately began trading his  
10 money in options.

11 27. Following Lockrem's death, Spicuzza stayed on the  
12 mainland and did not return to Kauai for many weeks. Upon her  
13 return, however, she received a letter enclosing a final bank  
14 account payout to Lockrem in the approximate amount of \$2,100.  
15 Although Lockrem was already deceased, Spicuzza deposited the  
16 amount into their joint account and waited for the check to  
17 clear. After the check cleared, she withdrew that amount along  
18 with the remaining \$3,600 balance and transferred it to her  
19 personal checking account.

20 28. After Arana discovered that Spicuzza had liquidated the  
21 last sum from joint account and that the "hold" had not prevented  
22 the final withdrawal, she objected to the Kauai Federal Credit  
23 Union. The Credit Union, realizing its mistake, contacted  
24 Spicuzza and demanded the return of the approximate \$2,100.  
25 Spicuzza refused. Eventually, the Kauai Federal Credit Union had  
26 to sue Spicuzza for the return of the funds. After litigating  
27 the issue in a Hawaii state court, the court ordered Spicuzza to  
28

1 return the funds.

2

3 FIRST CAUSE OF ACTION

4 (Breach of Fiduciary Duty)

5 29. The Lockrem Estate repeats and realleges paragraphs 1  
6 through 28 as though set forth in full herein.

7 30. "A broker/dealer is a fiduciary who owes his customer  
8 a high degree of care in transacting business." Mansbach v.  
9 Prescott, Ball & Turben, 598 F.2d 1017, 1026 (1979).

10 Respondents, through Spicuzza, served as Lockrem's broker for  
11 approximately one year. During this period, respondents owed a  
12 fiduciary duty to Lockrem to act in the best interests of Lockrem  
13 and to refrain from taking or authorizing any act that would  
14 cause harm to Lockrem.

15 31. Respondents breached their fiduciary duty to Lockrem  
16 by, among other things:

17 a. Taking Lockrem's monies and opening accounts with  
18 three separate broker dealers in the name of Spicuzza;

19 b. Investing Lockrem's funds into speculative single  
20 issue securities, covered call options, straight options and  
21 naked options;

22 c. Failing to obtain Lockrem's authorization for each  
23 transaction executed in the accounts;

24 d. Failing to keep Lockrem adequately informed of the  
25 true status of the accounts;

26 e. Failing to make suitable investments on behalf of  
27 Lockrem;

f. Converting approximately \$220,000 from Lockrem and his Estate to their own benefit;

g. Making fraudulent representations to Lockrem's heirs following his death in October, 1997;

h. Continuing to trade Lockrem's monies after his death in October, 1997; and

i. Failing to act in Lockrem's best interests.

32. As a direct and proximate result of respondents' breach of fiduciary duty, Lockrem has been damaged in an amount to be proven at arbitration, in addition to interest at the maximum legal rate.

33. Further, respondents actions were willful, wanton, malicious and oppressive and justify the award of exemplary and punitive damages against them.

SECOND CAUSE OF ACTION

### (Conversion)

34. The Lockrem Estate repeats and realleges paragraphs 1 through 33 as though set forth in full herein.

35. As discussed above, Spicuzza converted approximately \$220,000 from Lockrem and his Estate to her own personal use.

36. Lockrem is informed and believes and, on that basis, alleges that Spicuzza currently has in her possession, custody or control monies and other properties of Lockrem.

37. Lockrem is informed and believes and, on that basis, alleges that Spicuzza is aware that she has monies and other properties of Lockrem in her possession. Nevertheless, Spicuzza

1 refuses to return said property to Lockrem.

2 38. The acts of Spicuzza constitute conversion.

3 39. Lockrem is informed and believes and, on that basis,  
4 alleges that as a result of Spicuzza's conduct, Lockrem has been  
5 damaged in an amount to be proven at trial.

6 40. Lockrem is informed and believes and, on that basis,  
7 alleges that Spicuzza's actions were willful, wanton, malicious  
8 and oppressive and justify the award of exemplary and punitive  
9 damages against her and Prudential.

10 THIRD CAUSE OF ACTION

11 (Fraud and Deceit)

12 41. The Lockrem Estate repeats and realleges paragraphs 1  
13 through 40 as though set forth in full herein.

14 42. Spicuzza's representations and promises, as described  
15 above, were false, misleading and deceitful at the time they were  
16 made to Lockrem.

17 43. At the time they made these representations and  
18 promises, Spicuzza knew they were false, misleading and  
19 deceitful. Also, at the time they made the promises described  
20 above, Spicuzza had neither the intention nor the ability to  
21 fulfill them.

22 44. Spicuzza made the representations and promises  
23 described above with the intent that Lockrem would rely on them.  
24 Lockrem did not know these representations and promises were  
25 false, misleading and deceitful. He actually, justifiably and  
26 detrimentally relied on Spicuzza's representations and promises  
27 by placing his money under Spicuzza's management and bestowing  
28

1 certain authorizations to act on his behalf.

2 45. As a direct and proximate result of Spicuzza's  
3 fraudulent and deceitful conduct, Lockrem has been damaged in an  
4 amount to be proven at arbitration, in addition to interest at  
5 the maximum legal rate.

6 46. Further, Spicuzza's actions were willful, wanton,  
7 malicious and oppressive and justify the award of exemplary and  
8 punitive damages against her and Prudential.

9

10 FOURTH CAUSE OF ACTION

11 (Unauthorized Trading)

12 47. The Lockrem Estate repeats and realleges paragraphs 1  
13 through 46 as though set forth in full herein.

14 48. Rule 2510(b) of the NASD Conduct Rules provides in  
15 pertinent part:

16 " [n]o member or registered representative shall  
17 exercise any discretionary power in a customer's  
18 account unless such customer has given such prior  
19 written authorization to a stated individual or  
20 individuals and that the account has been accepted by  
21 the member, as evidenced in writing by the member or  
22 the partner, officer or manager, duly designated by the  
23 member in accordance with Section 27 of these Rules.

24 49. Lockrem did not provide Spicuzza with any  
25 authorization, either written or oral, to trade on his account on  
26 a discretionary basis.

27 50. On numerous occasions Spicuzza used Lockrem's funds to

1 trade securities without obtaining Lockrem's authorization.

2 51. Spicuzza's unauthorized trading was done in furtherance  
3 of her scheme to defraud Lockrem.

4 52. As a direct and proximate result of Spicuzza's conduct,  
5 Lockrem has been damaged in an amount to be proven at  
6 arbitration, in addition to interest at the maximum legal rate.

7 53. Further, Spicuzza's actions were willful, wanton,  
8 malicious and oppressive and justify the award of exemplary and  
9 punitive damages against her and Prudential.

10

11 FIFTH CAUSE OF ACTION

12 (Elder Abuse)

13 54. The Lockrem Estate repeats and realleges paragraphs 1  
14 through 53 as though set forth in full herein.

15 55. The applicable Elder Abuse Statutes provide for the  
16 protection of elder or dependent adults from among other things,  
17 "fiduciary abuse," which includes the following:

- 18 a) a situation in which any person who has the care or  
19 custody of, or who
- 20 b) stands in a position of trust to an elder or dependent  
21 adult;
- 22 c) takes, secretes, appropriates their money or property,  
23 to any use or purpose not in the due and lawful  
24 execution of his or her trust.

25 56. At all relevant times Lockrem was an elder or dependent  
26 adult within the meaning of the applicable Elder Abuse Statute.

27 57. Spicuzza stood in a position of trust to Lockrem due to

1 their relationship. Lockrem looked to Spicuzza to look out for  
2 his best interests. Instead, Spicuzza took advantage of  
3 Lockrem's trust and age by, among other things, converting his  
4 monies for her own benefit.

5 58. As a direct and proximate result of Spicuzza's  
6 violation of the applicable Elder Abuse Statutes of Arizona,  
7 Nevada or Hawaii, Lockrem has been damaged in an amount to be  
8 proven at arbitration, in addition to interest at the maximum  
9 legal rate.

10

11

SIXTH CAUSE OF ACTION

12

(Selling Away)

13

14 59. The Lockrem Estate repeats and realleges paragraphs 1  
through 58 as though set forth in full herein.

15

16 60. Rule 3030 of the NASD Conduct Rules provides in  
pertinent part that:

17

18 No person associated with a member in any  
19 registered capacity shall be employed by, or accept  
20 compensation from, any other person as a result of any  
21 business activity, other than a passive investment,  
22 outside the scope of his relationship with his employer  
23 firm, unless he has provided prompt written notice to  
24 the member.

25

26 61. Rule 3040 of the NASD Conduct Rules provides in  
pertinent part that

27

28 Prior to participating in any private securities  
transaction, an associated person shall provide written

1 notice to the member with which he is associated,  
2 describing in detail the proposed transaction and the  
3 person's proposed role therein and stating whether he  
4 has received or may receive selling compensation in  
5 connection with the transaction.

6 62. Spicuzza violated both Rule 3030 and 3040 by taking  
7 Lockrem's monies and opening securities account in her name,  
8 without providing any written notification to Prudential.

9 63. Spicuzza further violated these rules by entering into  
10 an agreement with Lockrem to invest his monies and split any  
11 gains made from the investments, without providing any written  
12 notification to Prudential.

13 64. Spicuzza further violated these rules by trading in the  
14 securities accounts of Lockrem for her benefit, without providing  
15 any written notification to Prudential.

16 65. Spicuzza further violated these rules by persuading  
17 Lockrem to loan her other monies in exchange for her promise to  
18 physically take care of him and allow him to live in a room in  
19 her home, without providing any written notification to  
20 Prudential.

21 66. Spicuzza further violated these rules by borrowing  
22 approximately \$110,000 from Lockrem to pay down her mortgage debt  
23 and to pay for other personal expenses, again without providing  
24 any written notification to Prudential.

25 67. As a direct and proximate result of this conduct,  
26 Lockrem has been damaged in an amount to be proven at  
27 arbitration, in addition to interest at the maximum legal rate.

**SEVENTH CAUSE OF ACTION**

(Failure to Supervise Against Prudential and Prudential  
Securities, Inc.)

68. The Lockrem Estate repeats and realleges paragraphs 1 through 67 as though set forth in full herein.

69. At all relevant times, Prudential's registered representatives were independent contractors who operated other businesses in addition to their securities business through Prudential.

70. Rule 3010 of the NASD Conduct Rules requires that each member establish and maintain a system to supervise the activities of each registered representative that is reasonably designed to achieve compliance with applicable securities laws and regulations and with the rules of the NASD. It must include written procedures that are established, maintained and enforced.

71. Prudential did not have an adequate system of supervision over the affairs of Spicuzza. Prudential failed to comply with its supervisory obligations over Spicuzza.

72. Prudential's failure to establish and implement adequate supervisory procedures over Spicuzza is inexcusable, particularly in view of the NASD's dissemination to Prudential of NASD Notice to Members 86-65, dated September 12, 1986, which expressly warned NASD member firms that the NASD had observed a pattern of rule violations and other regulatory problems stemming from the employment of registered persons who engage in securities-related activities on a full and part-time basis at

1 locations away from the offices of the member. The NASD pointed  
2 out that these off-site representatives, often classified for  
3 compensation purposes as independent contractors, are involved in  
4 other business enterprises such as insurance, real estate sales,  
5 accounting, or tax planning, and also frequently operate as  
6 separate business entities under names other than those of the  
7 members. The NASD made the following observations concerning the  
8 regulatory responsibilities of member firms that are of  
9 particular relevance to this case:

10 Irrespective of an individual's location or  
11 compensation arrangements, all associated persons are  
12 considered to be employees of the firm with which they  
13 are registered for purposes of compliance with NASD  
14 rules governing the conduct of registered persons and  
15 the supervisory responsibilities of the member. The  
16 fact that an associated person conducts business at a  
17 separate location or is compensated as an independent  
18 contractor does not alter the obligations of the  
19 individual and the firm to comply fully with all  
20 applicable regulatory requirements.

21

22 Firms employing off-site representatives are  
23 responsible for establishing and carrying out  
24 procedures that will subject these individuals to  
25 effective supervision designed to monitor their  
26 securities-related activities and to detect and prevent  
27 regulatory compliance problems. This can include:  
28

- 1       1. Educating off-site personnel regarding their  
2       obligations as registered persons to the firm and  
3       to the public, including prohibited sales  
4       practices.
- 5
- 6       2. Maintaining regular and frequent contact with such  
7       individuals.
- 8
- 9       3. *Implementing appropriate supervisory practices, such as*  
10      *records inspections and compliance audits at the*  
11      *representatives' places of employment, to ensure that*  
12      *their methods of business and day-to-day operations*  
13      *comply with applicable rules and requirement. For*  
14      *greatest effectiveness in preventing and detecting*  
15      *violations, visits should be unannounced and include,*  
16      *for example, a review of on-site customer account*  
17      *documentation and other books and records, meetings*  
18      *with individual representatives to discuss the products*  
19      *they are selling and their sales methods, and an*  
20      *examination of correspondence and sales literature.*
- 21
- 22      Firms whose off-site personnel also engage in  
23      non-securities businesses should remind these  
24      individuals that correspondence pertaining to  
25      such businesses, unless submitted for review,  
26      may not include material related to  
27      securities transactions.
- 28

1       If a member has designated an individual  
2       responsible for reviewing the activities of  
3       other registered persons within the firm, the  
4       office of that individual must be inspected  
5       annually, regardless of whether such person  
6       is compensated as an employee or as an  
7       independent contractor.

8  
9       The actions of an associated person in  
10      dealing with customers and customer account,  
11      regardless of whether he or she is  
12      compensated as an employee or an independent  
13      contractor, are actions on behalf of the  
14      firm. The firm is responsible for  
15      supervising in a manner designed to detect  
16      and prevent violations of Section 2 [the NASD  
17      suitability rule]. Members should take  
18      affirmative steps to ensure that off-site  
19      personnel understand and abide by NASD and  
20      firm policies regarding dealings with  
21      customers customer account and customer  
22      funds. (Emphasis added)

23  
24      73. Prudential is liable for Lockrem's transactions with  
25      Spicuzza even if Prudential properly supervised Spicuzza, even if  
26      Prudential was not aware of the recommendations by Spicuzza, even  
27      if Prudential did not approve of the recommendations by Spicuzza,  
28

1 and even if Lockrem's transactions were not processed through  
2 Prudential. The Fifth Circuit Court of appeals had the following  
3 to say on this precise issue in the case of Lewis v. Walston &  
4 Co. 487 F.2d. 617, 623-24 (5<sup>th</sup> Cir. 1973):

5 Walston argues that [the broker] was acting beyond the  
6 scope of his employment. For example, Walston did not  
7 deal in unregistered securities. Moreover, [the  
8 broker] and the brokerage house did not perform their  
9 usual role as brokers; that is, the transaction did not  
10 involve the broker's placing an order through the  
11 house's New York office, which was then executed by the  
12 central office. In this regard, they note that Walston  
13 never stood to receive, and never did receive, any  
14 commission or other financial benefits from the direct  
15 and essentially private exchange [the broker] arranged.  
16 . . . Id. At 623-24.

17  
18 None of these superficially supportive bases for  
19 Walston's argument precludes the conclusion that [the  
20 broker's] actions were within the scope of his  
21 employment. That Walston did not deal in unregistered  
22 securities addresses, only the question whether [the  
23 broker's] conduct was authorized; . . . however,  
24 conduct may be within the scope of employment even if  
25 it is unauthorized, if it is sufficiently similar to  
26 authorized conduct. That the transactions did not  
27 involve the execution of an order through the brokerage  
28

1 house also does not necessarily mean that [the  
 2 broker's] acts were without the scope of his  
 3 employment. Brokers may and do take many actions in  
 4 the course of their dealings with customers that do not  
 5 relate directly to transactions executed through the  
 6 brokerage house; these actions are not for that reason  
 7 necessarily beyond the scope of the broker's  
 8 employment. That Walston did not receive any financial  
 9 benefit from the transactions is not of controlling  
 10 importance. If a particular act is authorized, or  
 11 sufficiently similar to an authorized act, finding that  
 12 act to be within the scope of employment does not  
 13 require that the act has conferred any particular  
 14 benefit, financial or otherwise, on the employer. Id.  
 15 At 624.

16 74. Likewise, the Sixth Circuit Court of Appeals opined in  
 17 the case of Holloway v. Howerdd, 536 F.2d 690, 695-96 (6<sup>th</sup> Cir.  
 18 1976):

19 [TSI, the broker-dealer, contends] "that it had no  
 20 knowledge of nor reasonable grounds to believe in the  
 21 existence of [the broker's] activity in publicly  
 22 selling unregistered stock." Id. At 695.

23  
 24 However, those persons who knew of [the broker's]  
 25 status with TSI and who were without knowledge that he  
 26 was acting separately from TSI were {correctly}  
 27 permitted to recover.

28

1 The liability of TSI is premised on the theory that "if  
2 one appoints an agent to conduct a series of  
3 transactions over a period of time, it is fair that he  
4 should bear losses which are incurred when such an  
5 agent, although without authority to do so, does  
6 something which is usually done in connection with the  
7 transactions he is employed to conduct."

8

9 There was no proof that TSI "usually" engaged in the  
10 sales of unregistered stock.

11

12 TSI, however, had an affirmative obligation to prevent  
13 use of the prestige of its firm to defraud the  
14 investing public. When its agents are dealing  
15 individually in the sale of securities TSI must be  
16 clearly disassociated from those transactions, as  
17 otherwise it will incur liability on the basis of  
18 respondent superior for the fraudulent representations  
19 of its agents.

20

21 [T]he district Judge correctly . . . held TSI liable in  
22 those plaintiffs who were without knowledge of  
23 limitations on the agent's authority. Id. At 696.<sup>1</sup>

24 75. Prudential is liable because they participated in,

25

26 <sup>1</sup> Henricksen v. Henricksen and Smith Barney, 640 F2d 880, 887 (7<sup>th</sup> Cir. 1980) ("Under  
27 common law principles, a principal is liable for the deceit of its agent committed in the very  
28 business he was appointed to carry out. This is true even though the latter's specific conduct was  
carried on without knowledge of the principal.")

1 aided and/or supervised all of the transactions heretofore  
2 mentioned. Prudential is also liable under agency principles and  
3 the doctrine of respondent superior and controlling person for  
4 the negligent actions and breaches of duty by Spicuzza while in  
5 the scope of their employment, agency, and apparent agency with  
6 Prudential.

7 76.. As a direct and proximate result of Prudential's  
8 failure to supervise Spicuzza's activities, Lockrem has been  
9 damaged in an amount to be proven at arbitration, in addition to  
10 interest at the maximum legal rate.

11 EIGHTH CAUSE OF ACTION

12 (Negligence)

13 77. The Lockrem Estate repeats and realleges paragraphs 1  
14 through 76 as though set forth in full herein.

15 78. Respondents' violation of NASD rules constitutes  
16 negligence. As the Fifth Circuit observed in Miley v.  
17 Oppenheimer & Co., Inc., 637 F.2d 318, 333 (5<sup>th</sup> Cir. 1981), the  
18 NYSE and NASD rules are excellent tools against which to assess  
19 in part the reasonableness or excessiveness of a broker's  
20 handling of an investor's account," and the lower court properly  
21 included a reference to those rules in its jury charge. See  
22 Mihara v. Dean Witter & Company, Inc., 619 F.2d 814, 824 (9<sup>th</sup>  
23 Cir. 1980) ("Appellants content that the admission of testimony  
24 regarding the New York Stock Exchange and NASD rules served to  
25 dignify those rules and regulations to some sort of standard.  
26 The admission of testimony relating to those rules was proper  
27 precisely because the rules reflect the standard to which all  
28

1 brokers are held."). See also Dean Witter Reynolds, Inc. v.  
2 Hammock, 489 So. 2d 761, 767 (1986) ("Case law is clear that  
3 evidence of violation of industry standards is admissible as non-  
4 conclusive evidence of negligence"); St. Louis-San Francisco R.R.  
5 Co. v. White, 369 So.2d 1007 (Fla. 1<sup>st</sup> D.C.A. 1979); St. Louis-  
6 San Francisco R.R. Co. v. Burlison, 262 So.2d 280 (Fla. 1<sup>st</sup>  
7 D.C.A. 1972); Clements v. Boca Aviation, Inc. 444 So.2d 597 (Fla.  
8 4<sup>th</sup> D.C.A. 1984); Nance v. Winn Dixie Stores, Inc. 436 So.2d 1075  
9 (Fla. 3<sup>rd</sup> D.C.A. 1983); Reese v. Seaboard Coastline R.R. Co., 360  
10 So.2d 27 (Fla. 4<sup>th</sup> D.C.A. 1978).

11 79. As indicated above, respondents violated, among other  
12 things, Rules 2310, 2510, 3010, 3030 and 3040 of the NASD Conduct  
13 Rules. These violations constitute *prima facie* evidence of  
14 unreasonable handling of Lockrem's monies.

15 80. Further, as indicated above, Prudential was negligent  
16 for, among other things, failing to adequately supervise  
17 Spicuzza.

18 81. Prudential was further negligent in failing to inquire  
19 as to the source of her investment funds although it knew, or  
20 should have known, that Spicuzza did not earn anywhere near the  
21 amount of money she invested and traded.

22 82. As a direct and proximate result of the foregoing  
23 conduct, Lockrem has been damaged in an amount to be proven at  
24 arbitration, in addition to interest at the maximum legal rate.

25     ///

26     ///

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28

**NINTH CAUSE OF ACTION**

(Injunctive Relief Against Spicuzza)

83. The Lockrem Estate repeats and realleges paragraphs 1 through 82 as though set forth in full herein.

84. Spicuzza's retention of Lockrem's remaining monies, unless and until enjoined by the NASD, will cause great and irreparable injury to Lockrem in that there is a great likelihood that Spicuzza will dissipate the funds.

85. Lockrem has no adequate remedy at law for the injuries currently being suffered and which will be suffered as a direct and proximate result of Spicuzza's actions, as described above.

111

111

WHEREFORE, Lockrem's Estate prays for judgement against respondents as follows:

FIRST THROUGH FOURTH CAUSES OF ACTION

1. Out of pocket damages in an amount to be proven at arbitration;

2. Interest at the maximum legal rate; and

### 3. Punitive damages;

**FIFTH THROUGH EIGHTH CAUSES OF ACTION**

4. . Out of pocket damages in an amount to be proven at arbitration; and

5. Interest at the maximum legal rate;

1                   NINTH AND ALL CAUSES OF ACTION

2                   6. For preliminary and permanent injunctive relief  
3 enjoining Spicuzza and her agents, servants, employees and those  
4 persons acting in concert or participation with her, and each of  
5 them, from engaging in or performing directly or indirectly any  
6 and all of the following acts:

7                   (a) Transferring, changing, wasting, dissipating,  
8 converting, concealing, or otherwise disposing of, in any manner,  
9 all funds that Spicuzza received from Lockrem or that is in the  
10 possession of Spicuzza;

11                  (b) Destroying, mutilating, concealing, transferring,  
12 altering, or otherwise disposing of, in any manner, any books,  
13 records, computer programs, computer files, computer printouts,  
14 correspondence, memoranda, brochures, or any other documents of  
15 any kind, pertaining in any manner to the funds that Spicuzza  
16 received from Lockrem;

17                  (c) Transferring, assigning, selling, hypothecating,  
18 or otherwise disposing of any securities, any notes, investment  
19 contracts, or other securities or any real property or  
20 encumbering any real property of Spicuzza.

21                  7. For preliminary and permanent injunctive relief placing  
22 a freeze on all accounts at any bank, financial institution or  
23 brokerage firm, all certificates of deposit or other funds or  
24 assets, held in the name of, or for the benefit of, Spicuzza that  
25 contain any or all of the funds that Spicuzza received from  
26 Lockrem.

27                  8. For all of Lockrem's Estate's attorneys fees and costs

1 of litigation incurred in or related to this action;

2 9. For pre-judgment interest; and

3 10. For such other and further relief as the Arbitration  
4 Panel may deem just and proper.

5

6 ON ALL CAUSES OF ACTION

7 11. For all of Lockrem's Estate's attorneys fees and costs  
8 of litigation incurred in or related to this action;

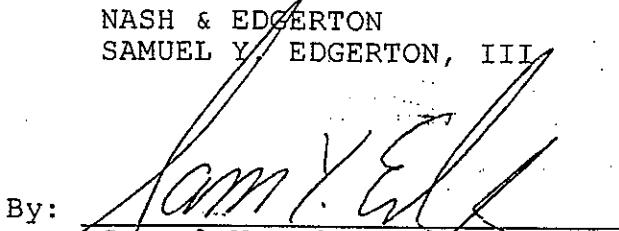
9 12. For pre-judgment interest; and

10 13. For such other and further relief as the Arbitration  
11 Panel may deem just and proper.

12 DATED: December 21, 2000

13 NASH & EDGERTON

14 SAMUEL Y. EDGERTON, III

15 By: 

16 Samuel Y. Edgerton, III  
17 Attorneys for Claimants  
18 Linda Arana, Executor of the  
19 Estate of her late father,  
20 Theodore Lockrem

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 2615 Pacific Coast Highway, Suite 322, Hermosa, California 90254.

On December 1, 2000, I served the following document described as:

**FIRST AMENDED STATEMENT OF CLAIM**

on the interested parties in this action by placing the true copies thereof enclosed in sealed envelopes as stated on the attached mailing list.

Mr. Richard Berry  
Mr. Rick Agbay  
National Association of Securities Dealers, Inc.  
300 So. Grand Avenue, #1620  
Los Angeles, California 90071

Gail Spicuzza-Zorn  
4064 Kaahumanu Place  
Princeville, HI 96722-3597

Pruco Securities Corporation  
Legal Department  
751 Broad Street  
Newark, N.J. 07102-3777

Prudential Securities Inc.  
Legal Department  
199 Water Street  
New York, NY 10292-0129

(X) I deposited such envelope in the mail at Hermosa Beach, California. The envelope was mailed with postage thereon fully prepaid.

( ) By Personal Service, I caused such envelope to be delivered by hand to David King, Esq. at the address listed above.

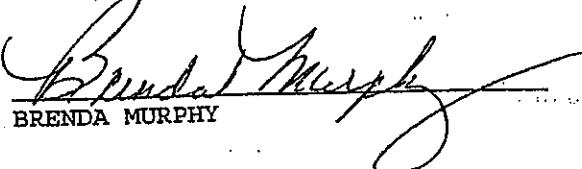
( ) By overnight courier, I caused the above-referenced document(s) to be delivered to an overnight courier service (Federal Express), for delivery to the above addressee(s).

( ) By facsimile machine I caused the above-referenced document(s) to be transmitted to the above-named person at the following telephone numbers above.

(X) (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

( ) (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

1 EXECUTED this 21 day of December, 2000 at Hermosa Beach, California.  
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BRENDA MURPHY

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 2615 Pacific Coast Highway, Suite 322, Hermosa, California 90254.

On January 14, 2001, I served the following document described as:

**FIRST AMENDED PROOF OF SERVICE**

on the interested parties in this action by placing the true copies thereof enclosed in sealed envelopes as stated on the attached mailing list:

Mr. Richard Berry  
Mr. Rick Agbay  
National Association of Securities Dealers, Inc.  
300 So. Grand Avenue, #1620  
Los Angeles, California 90071

Gail Spicuzza-Zorn  
4064 Kaahumanu Place  
Princeville, HI 96722-3597

Gail Spicuzza-Zorn  
6712-A Shincke Road, N.E.  
Olympia, Washington 98506

Pruco Securities Corporation  
Legal Department  
751 Broad Street  
Newark, N.J. 07102-3777

Prudential Securities Inc.  
Legal Department  
199 Water Street  
New York, NY 10292-0129

(X) I deposited such envelope in the mail at Hermosa Beach, California. The envelope was mailed with postage thereon fully prepaid.

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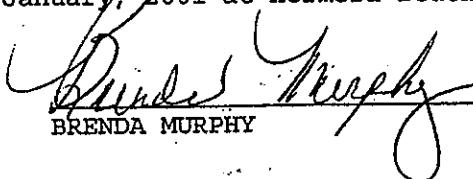
( ) By facsimile machine I caused the above-referenced document(s) to be transmitted to the above-named person at the following telephone numbers above.

(X) (STATE) I declare under penalty of perjury under the laws of the State

1 of California that the above is true and correct.

2 ( ) (FEDERAL) I declare that I am employed in the office of a member of the  
3 bar of this court at whose direction the service was made.

4 EXECUTED this 11 day of January, 2001 at Hermosa Beach, California.

5   
6 BRENDAMURPHY